

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
IN ADMIRALTY**

First State Bank and Trust,
a Minnesota banking corporation,

Case Number: 11-cv-02804-DWF-TNL

Plaintiff,

v.

The Vessel, *B & B on the River*, U.S. Official
No. 1196593, *in rem*, Verne B. Porter,
Rebekah L. Porter, and United States of
America, Department of Treasury-Internal
Revenue Service,

Defendants.

REQUEST FOR CONFIRMATION OF SALE OF VESSEL

Plaintiff, First State Bank and Trust, a Minnesota banking corporation (“Lender”), moves the Court for an Order confirming the sale of the vessel, *B & B on the River*, U.S. Official No. 1196593, Hull No. TKZ00932A898 (“Vessel”), together with:

(a) all of the sails, fittings, structures, and other improvements now standing or at any time hereafter constructed or placed upon the vessel; and (b) all heating, plumbing, and lighting apparatus and fixtures, boilers, furnaces, oil burners, communication and navigation systems, and motors, engines, and machinery, electrical equipment, air conditioning apparatus, water and gas apparatus, pipes, ranges, water heaters, mirrors, mantels, refrigerating plant and refrigerators, water softeners, carpets, carpeting, cooking apparatus, appliances and appurtenances, furniture, furnishings, maintenance equipment, storm windows and doors, window shades, and blinds, locks, and all other fixtures, machinery, equipment, appliances, and personal property of every kind and nature whatsoever now or hereafter owned by Mortgagor specifically excluding property owned by any tenant of the Mortgaged property (as herein after defined) and further excluding any equipment or trade fixtures for which seller financing is provided, located in, on, or about, or used or intended to be used with or in connection with the use, operation, or enjoyment of the vessel, including all extensions, additions, improvements, betterments, renewals, and replacements of any of the foregoing and all the right, title, and interest of Mortgagor inane such personal property or fixtures, together with the benefit of any deposits or payments now or hereafter made by Mortgagor or on its behalf; and (c) all

hereditaments, rights, privileges, and appurtenances now or hereafter belonging, attached, or in any way pertaining to the vessel or to any structure, or improvement now or hereafter located therein (all of the foregoing, together with the "whole" of the vessel, are hereinafter referred to as the "Mortgaged Property"),

pursuant to Rule E(9), of the Supplemental Rules for Admiralty or Maritime Claims. In support of its motion, Lender asserts the following:

1. On September 29, 2011, Lender filed a Verified Complaint in the matter captioned-above seeking, among other things, to enforce that certain preferred ship mortgage, security agreement and financing statement made by Defendant, Verne B. Porter ("Borrower"), in favor of Lender, dated February 22, 2007, and recorded with the U.S. Department of Homeland Security, U.S. Coast Guard on March 2, 2007, as Batch No. 578020, Document ID 6760973 ("Preferred Mortgage"), which encumbers the Vessel and the Mortgaged Property, *in rem*.

2. Lender also filed a Motion for Order Directing the Issuance of the Warrant of Arrest of the Vessel and the Mortgaged Property, which Order was issued by the Court on October 7, 2011.

3. The Warrant of Arrest directed the United States Marshal to take custody of the Vessel and the Mortgaged Property, and to retain custody pending further order of this Court.

4. Subsequent to the issuance of the Warrant of Arrest, the United States Marshal seized the Vessel and the Mortgaged Property.

5. Lender subsequently moved for and obtained an Order from the Court dated March 26, 2012, granting Lender's motion for Summary Judgment, entering an order for foreclosure of the Preferred Mortgage, adjudicating that the Lender's interest in the Vessel and the Mortgage Property was prior and superior to that of all other persons, and entering judgment against Borrower.

6. Lender has subsequently reached an agreement for the sale of the Vessel and the Mortgaged Property for the sum of One Hundred Fifty Five Thousand Dollars (\$155,000.00), to Don MacLeod.

7. Pursuant to the terms of the Preferred Mortgage and Minnesota Statutes Chapter 336.9, Lender, as a secured creditor, elected to liquidate the Vessel and the Mortgaged Property, by private sale, pursuant to Minnesota Statutes § 336.9-610.

8. On June 29, 2012, Lender provided notice of Lender's intent to dispose of the Vessel and the Mortgaged Property to Borrower and Defendants, Rebekah L. Porter, and United States of America, Department of Treasury-Internal Revenue Service ("IRS"), by certified and regular U.S. Mail, pursuant to Minnesota Statutes § 336.9-610.

9. Pursuant to Minnesota Statutes § 336.9-612, the time for Borrower or Defendant, Rebekah L. Porter, to object to Lender's disposition of the Vessel and the Mortgaged Property prior to Lender's sale of the same expired on July 9, 2012.

10. Pursuant to 26 U.S.C. § 7245(c)(1), the time for the IRS to object to Lender's disposition of the Vessel and the Mortgaged Property prior to Lender's sale of the same expired on July 23, 2012.

11. No objections to Lender's disposition of the Vessel and the Mortgaged Property have been made within the time for such objections.

12. Lender's sale of the Vessel and the Mortgaged Property should be confirmed.

13. The lien of the IRS, in and to the Vessel and the Mortgaged Property, should be discharged, pursuant to 26 U.S.C. § 7245.

14. The Preferred Mortgage should be released from the Vessel and the Mortgaged Property.

15. Title in and to the Vessel and the Mortgaged Property shall be transferred to the purchaser, Don MacLeod, upon application to the United States Coast Guard.

16. The net proceeds derived from the sale of the Vessel and the Mortgaged Property, in the amount of One Hundred Forty Two Thousand Six Hundred Dollars (\$142,600.00), shall be applied to the judgments entered against Borrower herein and Lender shall be entitled to retain its judgment for the deficiency.

WHEREFORE, Plaintiff, First State Bank and Trust, a Minnesota banking corporation, requests the Court issue an Order confirming the sale of the Vessel and the Mortgaged Property.

Respectfully submitted,

ANASTASI & ASSOCIATES, P.A.

Dated: July 23, 2012.

/s/ Garth G. Gavenda

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